

1. Objection to Drawings under 37 CFR § 1.83(a)

The Examiner objected to Figures 2A and 2B under 37 CFR § 1.83(a) for failure to show every feature of the invention specified in the claims. Specifically, the Examiner states that Figures 2A and 2B do not show a wedge shaped fluid diverter as claimed in claims 2 and 8-10, do not show a flow channel extending lengthwise along an outer surface of the fluid diverter member as claimed in claims 3 and 8-10, and do not show an extension spout as claimed in claims 6 and 8-10. Applicant respectfully requests reconsideration and withdrawal of the Examiner's objection.

Applicant's original drawings not only show but also identify by number and lead lines all of the features of the claims. The Examiner has previously indicated that Figures 2A and 2B show a patentably distinct species of the generic drinking cup depicted in Figures 1A, 1B and 1C. Both the generic drinking cup and the species include a fluid diverter member, which is labeled as Element No. 4 in Figures 1A and 2B. The fluid diverter member 4 is clearly described in applicant's description of the preferred embodiments, and that description corresponds to the fluid diverter member 4 shown in the drawings. Also depicted in Figures 1A and 2B is a flow channel, distinguishable by the stippling across the outer surface of the fluid diverter member and labeled as Element No. 12, extending lengthwise along the outer surface of said fluid diverter member. The characteristics of the flow channel are clearly described at page 9, line 16 through page 10, line 5 of applicant's original patent application, and that description corresponds to the flow channel shown in the drawings. Additionally, an extension spout, labeled as Element No. 8, is shown in Figures 1A, 2A and 2B. All of these items were present in the original draft drawings, and are included in the formal drawings filed herewith. Since all

of the elements of the subject matter sought to be patented are included in the drawings, namely Figures 1A, 1B, 1C, 2A and 2B, the applicant submits that the drawings comply with 37 CFR § 1.83(a) and respectfully requests that the objection to the drawings be withdrawn.

2. Withdrawal of Claims 2, 3, 6, 7 and 8-10

The Examiner withdrew claims 2, 3, 6 and 8-10 on grounds that features of these claims are not shown in the drawings. For the foregoing reasons, each of the claimed features is shown in the drawings as originally filed. Additionally, because applicant did not have an opportunity to respond to the grounds of the objection before the claims were withdrawn, withdrawal of the claims at this stage of the prosecution is improper.

The Examiner withdrew claim 7 on grounds that claim 7 covers a non-elected species that does not depend from an allowable base claim. For the reasons set forth below, applicant respectfully suggests that claim 7 is dependent upon an allowable base claim, and therefore that the withdrawal of claim 7 should be withdrawn.

3. Rejections under 35 USC § 102(b)

Claims 1, 2, 4, 6, 8 and 9 have been rejected under 35 USC § 102(b) as being anticipated by Watson (U.S. Patent No. 4,235,348).

Applicant respectfully submits that Watson does not anticipate claims 1, 2, 4, 6, 8 and 9. Watson differs markedly from the present invention because it does not disclose several features of the claimed invention. Anticipation under 35 USC 102(b) requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim. *Karsten Mfg. Corp. v. Cleveland Golf Co.*,

58 USPQ.2d 1286, 1291 (Fed.Cir.2001); MPEP § 2131. To establish a prima facie case of anticipation under 35 USC 102(b), the Examiner must identify the elements of the claims of the application, determine their meaning in light of the specification and prosecution history, and identify the corresponding elements disclosed in the allegedly anticipating references. *Lindermann Maschinenfabrick GMBH v. American Hoist and Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984). If the Examiner does not produce a prima facie case of anticipation, then the applicant is entitled to the grant of a patent. *In re Oetiker*, 24 USPQ.2d 1443 (Fed. Cir. 1992). Because Watson does not disclose each and every element of the claimed invention, arranged as in the claims, it is respectfully submitted that the Examiner has not established a prima facie case of anticipation under 35 USC 102(b).

Independent claims 1 and 8 recite a “fluid diverter member contiguous with an inner surface and said bottom of said vessel, said diverter member sloping downward...from said sipping region...toward an opposing side of said vessel such that when said bottom of said vessel is pivoted upward about said sipping region...said diverter member compels fluid through said sipping region.” Claims 2, 4 and 6, which are dependent on claim 1, and claim 9, which is dependent on claim 8, also include the fluid diverter member recited in their corresponding independent claims. None of these claimed features are shown in the Watson reference.

The Examiner has not identified any of the elements of the claims of the application, particularly the fluid diverter member, or the corresponding elements disclosed in the cited anticipating reference. Accordingly, the absence of a fluid diverter member in Watson is sufficient to overcome the grounds for the 102(b) rejection.

Moreover, Watson relates to a drinking vessel comprising a spout that projects laterally from one side of the vessel near its open upper end. Both Watson's disclosure and claims expressly recite a vessel comprising "a main body of generally hollow form having a closed bottom end, a generally uninterrupted peripheral side wall formed about a generally centered vertical axis, and terminating in an upper end." This description of the main body of Watson's vessel necessarily prohibits the inclusion of a fluid diverter member sloping downward from the sipping region toward an opposing side of the vessel.

For these reasons, the applicant submits that no prima facie case of anticipation has been established as to claims 1, 2, 4, 6, 8 and 9, and it is respectfully suggest that the claims are allowable over the art of record.

Because claim 1 is allowable, species claim 7, which depends directly from claim 1, is also allowable. As mentioned above, because claim 7 depends from an allowable generic claim, the withdrawal of claim 7 on grounds that claim 7 covers a separate species should be withdrawn and claim 7 should be allowed to issue.

4. Rejections under 35 USC § 103(a)

Claims 5 and 10 have been rejected under 35 USC § 103(a) as being obvious over Watson in view of Rosen (U.S. Patent No. 5,950,857). It is respectfully submitted that the Examiner has not made a prima facie showing of obviousness as to claims 5 and 10.

The Examiner bears the initial burden of factually supporting a prima facie conclusion of obviousness. MPEP § 2142. If the Examiner does not produce a prima facie case, the applicant is under no obligation to submit evidence of nonobviousness. *Id.*

To establish a prima facie case of obviousness, the examiner must demonstrate: (1) some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to combine reference teachings; (2) a reasonable expectation of success; and (3) that the references teach or suggest all of the claim limitations. *Id.*

To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. MPEP § 2143.03, citing *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). Applicant suggests that the Examiner has not made a prima facie case as to claims 5 and 10 because neither Watson nor Rosen teaches or suggests all the claim limitations, particularly a fluid diverter member.

The lack of a fluid diverter member in Watson was discussed *supra*. Rosen relates to a leak resistant drink box holder, which by necessity includes a straw to evacuate the contents of the drink box. A fluid diverter member as claimed in the application would serve no purpose in the invention disclosed in Rosen for two reasons. First, Rosen's drink box holder does not hold fluid, but instead holds a solid drink box; therefore, there is no fluid in the vessel that requires diverting. Second, since a straw is required to evacuate the contents of the drink box, pivoting the drink box holder would not result in the fluid diverter member compelling liquid through the sipping region, but instead would result in the failure of the straw to maintain a liquid seal and the inability to evacuate the drink box.

Based on the foregoing, the cited references not only fail to teach or suggest all of the claim limitations, namely the fluid diverter member, but also teach away from the

inclusion of such a limitation in their respective inventions. Therefore, applicant submits that no prima facie case of obviousness has been established as to claims 5 and 10, and it is respectfully suggested that the claims are allowable over the art of record.

5. Conclusion

For the reasons explained above, applicant suggests that claims 1-10 are allowable over the art of record and requests that the Examiner's stated rejections be withdrawn. Applicant further requests that the restriction requirement as to claims 11-17 be withdrawn or made final.

Respectfully submitted,



Shawn D. Sentilles, Reg. No. 38,299
ADAMS AND REESE LLP
4500 One Shell Square
701 Poydras Street
New Orleans, LA 70139

Date: July 24, 2002